

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
March 10, 2011

In the Matter of MOELLER-
SANCHEZ/MOELLER, Minors.

No. 299851
St. Clair Circuit Court
Family Division
LC No. 09-000254-NA

Before: CAVANAGH, P.J., and JANSEN and SERVITTO, JJ.

PER CURIAM.

Respondent A. Moeller appeals as of right from a circuit court order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). Because the trial court did not clearly err in its findings, we affirm.

It is unnecessary to determine whether the circuit court erred by allowing petitioner to amend the supplemental petition to include §19b(3)(c)(ii) as an additional statutory basis for termination, or erred in finding that the evidence supported termination under §19b(3)(c)(ii), because the circuit court did not clearly err in finding that the remaining statutory grounds for termination were established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000); MCR 3.977(H) and (K).

Here, the children were removed from the home because respondent's partner physically abused one of the children and inflicted serious injuries. Despite recognizing the risk of harm her partner presented to the children as well as to herself, respondent continued to maintain a relationship with him. Further, respondent had a long-term substance abuse problem and failed to successfully achieve or maintain sobriety; she continued to test positive for illegal drugs, and tested positive for cocaine and amphetamines after the supplemental petition was filed. Further, respondent was convicted of at least two criminal charges during the period the children were under the jurisdiction of the circuit court and, on the day of trial, was arrested for a probation violation. The evidence supports the circuit court's determination that the grounds for termination under §§19b(3)(c)(i), (g), and (j) were established by clear and convincing evidence.

Respondent's claim that petitioner failed to make reasonable efforts to reunify the family, MCL 712A.19a(2), is without merit. Respondent was referred for substance abuse treatment and random drug screens, but failed to comply with services. While respondent claimed that she could not afford to pay for the screens, she also stated that she received \$400 a month in child support even though she did not have any childcare expenses. Furthermore, drug testing was apparently covered by the Residential Substance Abuse Treatment (RSAT) program mandated

by the terms of respondent's probation. Respondent has not explained why petitioner should be obligated to pay for services she was already receiving. Further, given that respondent did not always comply with drug testing in the RSAT program, she cannot show that she would have fared any better had petitioner paid for drug testing. See *In re Fried*, 266 Mich App 535, 543; 702 NW2d 192 (2005).

Further, contrary to what respondent argues, petitioner was not required to prove long-term neglect as held in *Fritts v Krugh*, 354 Mich 97, 114; 92 NW2d 604 (1958), overruled on other grounds by *In re Hatcher*, 443 Mich 426, 444; 505 NW2d 834 (1993). The *Fritts* decision predates the enactment of §19b(3), which now sets forth the criteria for termination.

We also reject respondent's argument that termination of her parental rights was improper because it was contrary to the children's best interests. Although parents have a significant interest in the companionship, care, custody, and management of their children, which has been characterized as an element of "liberty" to be protected by due process, *In re Brock*, 442 Mich 101, 109; 499 NW2d 752 (1993), once the petitioner presents clear and convincing evidence establishing a basis for termination under MCL 712A.19b(3), the respondent's liberty interest in the custody and control of her children is eliminated. *In re Trejo*, 462 Mich at 355-356. Respondent's reliance on the statutory presumption that a child's best interests will be served by awarding custody to a parent (see MCL 722.25(1)), is misplaced, because that presumption applies to a custody dispute under the child custody act, MCL 722.21 *et seq.*, which does not apply to termination proceedings under the Juvenile Code. *In re Barlow*, 404 Mich 216, 235-236; 273 NW2d 35 (1978). Under MCL 712A.19b(5), "[i]f the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." We review the circuit court's best interests decision for clear error. *In re Trejo*, 462 Mich at 356-357.

Considering the evidence that respondent was unable to overcome her long-term substance abuse problem and continued to maintain a relationship with the person who physically abused one of her children, and the children's needs for permanency, stability, and finality, the circuit court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Deborah A. Servitto